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September 12, 2006

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LaDonna Castanuela

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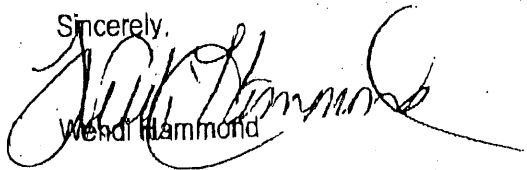
RE: SOAH Docket No. 582-06-1502; TCEQ Docket No. 2000-0195-AIR
Application of Oak Grove Management Co., LLC for Proposed
Air Permit No. 76474 and PSD-TX-1056

Dear Ms. Castanuela

Please find enclosed for filing a copy of Protestant's Exceptions to the Proposal For Decision in the above named and numbered matter. In accordance with TCEQ rules, this copy is being faxed today for filing and the original and 11 copies are being mailed for receipt within 3 days. Also, a copy of the same has been sent to the parties as listed on the certificate of service.

Thank you for your attention to this matter. If you have any questions, feel free to contact me.

Sincerely,



Wendi Hammond

Encl.

CC: Certificate of Service List (w/ encl.)

CHIEF CLERKS OFFICE

2006 SEP 13 AM 8:10

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

COPY

ON EACH COPY
2006 SEP 18 PM 2:42
CHIEF CLERK'S OFFICE

SOAH DOCKET NO. 582-06-1502
TCEQ DOCKET NO. 2006-0195-AIR

APPLICATION OF OAK GROVE § BEFORE THE STATE OFFICE OF
MANAGEMENT COMPANY, LLC §
FOR PROPOSED AIR PERMIT NO. §
76474 AND PSD-TX-1056 § ADMINISTRATIVE HEARINGS

PROTESTANT'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS:

COMES NOW Protestant Robertson County: Our Land, Our Lives (Robertson County OLOL) and files this its Exceptions to the Proposal For Decision (PFD) in this case, and in support thereof, respectfully submits the following:

I. INTRODUCTION

The PFD concludes that Applicant failed to carry its burden at hearing and therefore recommends denial of the permit. Supporting this recommendation are comprehensive Findings of Fact and Conclusions of Law. Protestant supports the PFD's recommendation; however, in the interest of producing the most complete record, Protestant files the following exceptions.

II. EXCEPTIONS TO FINDINGS OF FACTS

The following PFD's Findings of Fact should be revised as follows (note: proposed inserted language is identified by underline and proposed deleted language is identified with a strikethrough):

No. 9. Oak Grove's incomplete application was made available for public inspection during the entire public notice period.

No. 16. Oak Grove submitted a ~~complete~~ Form PI-1 General Application

No. 18. Oak Grove did not provide all supplemental information required by TCEQ's PI-1 Form.

No. 82. Oak Grove failed to prove that its proposed source would not cause or contribute to a condition of air pollution in violation of any national ambient air quality standard in any air quality control region.

II. EXCEPTIONS TO CONCLUSIONS OF LAW

The following Conclusions of Law should be revised as follows (note: proposed inserted language is identified by underline and proposed deleted language is identified as strikethrough):

9. Based on the above Findings of Facts and Conclusions of Law, Oak Grove failed to prove by a preponderance of the evidence that the Oak Grove facility would not cause or contribute to a condition of air pollution in violation of any national ambient air quality standard in any air quality control region.

13. Based on the above findings of fact and conclusions of law, Oak Grove failed to prove by a preponderance of the evidence that the Station would comply with the NAAQS in any air quality control region.

III. ARGUMENT IN SUPPORT OF EXCEPTIONS

The CAA sets out preconditions for the issuance of PSD permits. *Inter alia*, no PSD permit may issue unless **"the owner or operator of the facility demonstrates . . . that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any . . . national ambient air quality standard in any air quality control region."**¹ EPA rules track this statutory language at 40 C.F.R. 52.21(k),² and Texas' SIP adopted this EPA rule.³

¹ 42 U.S.C. § 7475(a)(3)(B) (emphasis added).

² 40 C.F.R. 52.21(k) states:

Source impact analysis. The owner or operator of the proposed source or modification **shall demonstrate** that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emission increases or reductions (including secondary sources) would not cause or contribute to air pollution in violation of: (1) any national ambient air quality standard in any air quality control region; or (2) Any applicable maximum allowable increase over the baseline concentration in any area. (emphasis added)

³ 30 TEX. ADMIN. CODE § 116.160 states "[e]ach proposed new major source or major modification in an attainment or unclassifiable area shall comply with the Prevention of Significant Deterioration (PSD) of

This demonstration is to be provided with the Application; however, Oak Grove did not provide with its application any demonstration concerning ozone impacts on areas downwind and outside of the local surrounding area of the proposed plant (e.g., impacts on the Dallas-Fort Worth nonattainment area and other air quality control regions). Despite Applicant's omission of this requisite demonstration, Protestant presented during the hearing on the merits evidence concerning this issue including, but not limited to, CAMx (or photochemical) modeling demonstrating such impacts. Applicant then submitted its own CAMx modeling in rebuttal.

The hearing on the merits revealed the following facts:

- The draft permit as currently written allows the Applicant to emit 43.2 tons of NOx for two to six days straight each month.⁴
- The CAMx modeling provided by Protestant's expert Dr. David Allen and by Applicant's rebuttal expert Mr. Ralph Morris relied upon a tons per day estimate of only 20.64 tons of NOx and 17.22 tons of NOx respectively.⁵
- If the CAMx modeling was performed using the worst case 43.2 tons per day of NOx which the draft permit allows, the impacts from Applicant's proposed emissions would be greater than any of the experts had actually modeled for this hearing.⁶
- Despite utilizing a smaller NOx emission limit than actually allowed by the draft permit, the CAMx modeling provided by Applicant's rebuttal expert proves that the DFW area will violate the 8-hour ozone NAAQS standard in 2009 taking into consideration every conceivable local, state and federal reductions program in currently in existence or known to be implemented between now and 2009.⁷

Air Quality regulations promulgated by the EPA in Title 40 Code of Federal Regulations (CFR) at 40 CFR §52.21."

⁴ 06/16/06 Transcript p. 659, ln. 6 – 10; p. 660, ln. 23 – p. 661, ln. 1. See also, 06/16/06 Transcript p. 659, ln. 1 – 5 and ln. 24 – p. 660, ln. 8.

⁵ Protestant's Exhibit P-1, p.7, ln.19-20 and p.9, ln. 37-38; Oak Grove Exhibit 46, p. 5 last paragraph stating "the total NOx emissions for both of the Oak Grove unites are assumed to be 17.22 tons per day (tpd)."

⁶ Protestant's Exhibit P-1, p. 8, ln. 1-3 and p. 10, ln. 8-11.

⁷ 06/20/06 Transcript, p. 1155, ln. 23 – p.1158, ln.12.

- Despite utilizing a smaller NOx emission limit than actually allowed by the draft permit, the CAMx modeling provided by Applicant's rebuttal expert proves that Applicant's proposed emissions will contribute additional ozone to the DFW nonattainment area in the future such that the DFW area will remain in nonattainment.⁸

Based on the evidentiary record, it is clear that Oak Grove Management Company, LLC ("Oak Grove" or "Applicant"), failed to appropriately demonstrate and meet its burden of proof with respect to demonstrating that its proposed coal fired power plant would not, if operated under the terms of the proposed permit, cause or contribute to air pollution in excess of any National Ambient Air Quality (NAAQS) in any Air Quality Control Region (AQCR).

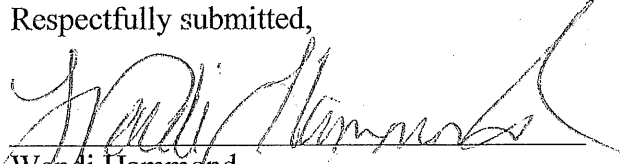
Further, as discussed in the ALJ's PFD, Applicant failed to prove that the NOx emissions provided in the draft permit and utilized for modeling purposes reflect actual emissions that would result from the Station; thus, the impacts from the plant could be significantly greater than what was demonstrated during the hearing. As such, the demonstrations provided during the hearing process underestimate the potential impacts of the Station on ozone in downwind areas such as the Dallas-Fort Worth nonattainment area. Therefore, Protestant agrees with ALJ's recommendation that Oak Grove's permit be denied and has provided the above suggested revisions to the PFD to create an even more detailed record.

⁸ 06/20/06 Transcript, p. 1164, ln. 23 – 25; Oak Grove Exhibit 43, p. 17, ln. 7-10.

IV. PRAYER

Protestant respectfully requests that the Commissioners adopt the PFD with the above-stated Exceptions and deny Oak Grove's permit application and draft permit as recommended by SOAH.

Respectfully submitted,



Wendi Hammond

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ATTORNEY FOR ROBERTSON COUNTY: OUR LAND, OUR LIVES

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of September, 2006, a true and correct copy of the foregoing has been sent by U.S. mail, facsimile and/or email (as indicated below) to the following:

VIA: Fax

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The Honorable Carol Wood
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VIA: Fax & Mail

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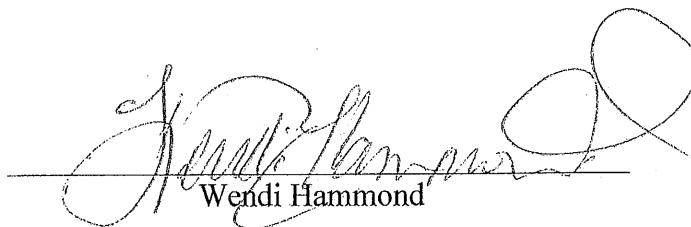
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